

forecasted index in Section 7.022, item A, except that the composite forecasted index is established based on the midpoint of the period January 1, 1988, to September 30, 1988, to the midpoint of the following rate year.

B. For the rate year beginning October 1, 1989, the interim program operating cost payment rate is the greater of the facility's 1988 reporting year allowable program operating costs per resident day increased by the composite forecasted index in Section 7.022, item A, or the facility's October 1, 1988, program operating cost payment rate increased by the composite forecasted index in Section 7.022, item A, except that the composite forecasted index is established based on the midpoint of the rate year beginning October 1, 1988, to the midpoint of the following rate year.

C. Temporary payment rate provisions. If an ICF/MR located in Kandiyohi County:

(1) was sold during 1994;

(2) is unable to obtain records necessary to complete the cost report from the former operator at no cost; and

(3) delicensed two beds during that year, then the commissioner shall determine the payment rate for the period May 1, 1995 through September 30, 1996, as provided in clauses (a) to (c).

(a) a temporary payment rate shall be paid which is equal to the rate in effect as of April 30, 1995.

(b) The payment rate in clause (a) shall be subject to a retroactive downward adjustment based on the provisions in clause (c).

(c) The temporary payment rate shall be limited to the lesser of the payment in clause a or the payment rate calculated based on the facility's cost report for the reporting year January 1, 1995 through December 31, 1995, and the provisions of this Section 7.015 and the reimbursement rules in effect on June 30, 1995, except that the provisions referred to in subclauses i and ii shall not apply:

i. the inflation factor in Section 7.022 and

ii. Section 2.160.

DEC 20 2000

Section 7.026 **Settle-up of costs.** The facility's program operating costs are subject to a retroactive settle-up for the 1988 and 1989 reporting years, determined by the following method:

A. If a facility's program operating costs, including one-time adjustment program operating costs for the facility's 1988 or 1989 reporting year, are less than 98 percent of the facility's total program operating cost payments for facilities with 20 or fewer licensed beds, or less than 99 percent of the facility's total program operating cost payments for facilities with more than 20 licensed beds, then the facility must repay the difference to the State according to the desk audit adjustment procedures. For the purpose of determining the retroactive settle-up amounts, the facility's program operating cost payment rates, including one-time program operating cost adjustment rates for those reporting years, by the prorated resident days that correspond to those program operating cost payment rates paid during those reporting years.

B. If a facility's program operating costs, including one-time adjustment program operating cost for the facility's 1989 reporting year are between 102 and 105 percent of the amount computed by multiplying the facility's program operating cost payment rates, by the prorated resident days that correspond to those program operating cost payment rates paid during that reporting year, the State must repay the difference to the facility according to the desk audit adjustment procedures. A facility's settle-up must be calculated by October 1, 1990.

Section 7.030 **One time adjustment to program operating cost payment rate.** For the purposes of this section, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one time adjustment shall be determined according to items A to H.

A. A facility is eligible for a one time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The Department or the Department of Health has issued a correction order.

(2) The federal government has issued a deficiency order requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

(3) The Department has determined a need exists based on a determination or

redetermination of need plan.

(4) The Department has approved a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability ("substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria for special needs rate exception).

B. To qualify for a one time adjustment the facility must document that:

(1) the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

(2) the deficiency or need cannot be corrected or met through a special needs rate exception; and

(3) the provisions in items C to H are met.

C. The facility must submit to the Department a written request for the one time adjustment to the program operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions during the rate year covering the date of the deficiency order or need determination, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident habilitation plans under payment rates established

by current or prior reimbursement rules.

D. The Department shall evaluate the documents submitted in item C using the criteria in items A and B. If the request meets the criteria in items A and B, the Department shall compute the one time adjustment to the program operating cost payment rate in accordance with subitems (1) to (4).

(1) The necessary and reasonable costs of clauses (a) to (f) shall be determined by the Department:

(a) the salary and related fringe benefits and payroll taxes for required additional program staff;

(b) program supplies;

(c) up to \$1,500 of equipment needed to implement the program. The Department shall approve an amount which exceeds the \$1,500 equipment limit if the Department determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The Department's determination shall be final;

(d) program consultants;

(e) repairs to property damaged by the residents; and

(f) employee training needed to meet the needs of the persons identified in the plan approved by the Department.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item C shall be subtracted from the amount computed in subitem (2).

(4) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

E. If the amount in item D is greater than zero, the Department shall allow a one time adjustment to the facility's total payment rate equal to that amount. The one time adjustment shall be effective on the first day of the month following the Department's determination unless the facility is eligible for a one time adjustment under item A, subitem (4). For a facility eligible under item A, subitem (4), the one time adjustment shall be effective on the first day of the month in which any person identified in the plan approved by the Department is admitted to the facility.

F. The one time adjustment to the facility's total payment rate shall remain in effect for a 12-month period. At the end of the 12-month period, the Department shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the Department shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item C, subitem (4), the Department shall recover the total amount paid under this section and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item C, subitem (4) and the actual costs incurred during the 12-month period are below the payments made under this subpart, the Department shall reduce the adjustment to the facility's total payment accordingly and recover any overpayment. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item C, subitem (4) incurred during the 12-month period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

G. The facility must record the costs associated with this subpart separately from other facility costs until the Department's fiscal and program review establishes that the facility has implemented the plan specified in item C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the Department has reviewed and approved these costs in accordance with item F. If the Department approves these costs, the costs incurred during the reporting year which includes 12 months of the additional costs identified in item D, subitem (1), shall be allowable.

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ATTACHMENT 4.19-D (ICF/MR)

Page 167

H. The Department shall authorize payments under Section 7.000 only once in a three year period for a facility.

SECTION 8.000 DETERMINATION OF THE SPECIAL OPERATING COST PAYMENT RATE.

The total allowable special operating costs in Section 6.060, as adjusted by Section 2.160, must be divided by the greater of resident days or 85 percent of licensed capacity days to compute the special operating cost payment rate.

Effective October 1, 1995, real estate insurance and professional liability insurance costs are not considered in computing the payment rate for special operating costs. For purposes of reimbursement, these are included with the general operating costs.

SECTION 9.000 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.

Section 9.010 **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

(1) The historical capital cost of the capital assets as limited by item C is the basis for calculating depreciation.

(2) For donations between a provider and a related organization, the net book value of the capital asset to the donor must be the basis for calculating depreciation for the donee. a donated capital asset is one acquired by the facility without making any payment in the form of cash, property, or services.

(3) Depreciation is not allowed on a capital asset or portion of a capital asset purchased through federal, state, or local appropriations or grants unless the appropriations or grant is required to be repaid through the revenues of the facility.

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to Section 4.080, subject to the limitations in subitem (6) and item C, and must be depreciated according to this

section. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

(5) When a facility first enters the medical assistance program, the accumulated depreciation of any used capital assets owned by the facility prior to entering the medical assistance program must be calculated by using the useful life schedule in item B starting from the later of the date of completion of construction, or the time of purchase by the current owner. However, the amount of accumulated depreciation must not exceed 50 percent of the historical capital cost of the capital asset.

(6) The historical capital cost of the capital assets and the accumulated depreciation of those capital assets must not be adjusted for either a full or partial change of ownership, reorganization of provider entities, or for any costs associated with replacing existing capital assets as a result of a casualty loss.

(7) In no instance shall the total accumulated depreciation allowance paid for a capital asset exceed the historical cost of that capital asset.

B. The straight line method of depreciation must be used to compute the facility's depreciation for each capital asset. The useful life of a capital asset must be determined in accordance with subitems (1) to (3), except as provided in Section 3.040, item E.

(1) The useful life of a new capital asset must be calculated as follows:

- (a) physical plant and other buildings must be depreciated over 35 years;
- (b) physical plant improvements and additions must be depreciated over the greater of the remaining useful life in clause (a) or 15 years;
- (c) land improvements must be depreciated over 20 years;
- (d) depreciable equipment except vehicles must be depreciated over five years; and
- (e) vehicles must be depreciated over four years.

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ATTACHMENT 4.19-D (ICF/MR)

Page 169

(2) The useful life of a used capital asset must be assigned by the provider, based on the physical condition of the used capital asset. The useful life assigned to the used capital asset must be the greater of the remaining useful life of the capital asset shown in subitem (1) for this type of capital asset, or one-half of the useful life shown in subitem (1) for that type of capital asset.

(3) The useful life of a leasehold improvement must be determined in accordance with subitem (1) or (2) for that type of capital asset.

C. The facility's historical capital costs shall be limited by subitems (1) to (5).

(1) The facility's total historical capital costs of capital assets, as determined in item A, must not exceed the maximum limits established annually per bed for licensed Class A beds and for licensed Class B beds, as follows:

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ATTACHMENT 4.19-D (ICF/MR)

Page 170

<u>Calendar Year</u>	<u>Class A</u>	<u>Class B</u>
Prior to 1974	\$11,000	-
1974	13,000	-
1975	14,820	-
1976	15,413	-
1977	16,406	-
1978	18,109	-
1979	20,010	-
1980	25,194	\$29,452
1981	28,016	32,751
1982	29,165	34,094
1983	29,952	35,015
1984	30,012	35,085
1985	31,723	37,085
1986	32,357	37,827
1987	33,263	38,886
1988	34,527	40,364
1989	34,700	40,566
1990	36,262	42,392
1991	36,987	43,240
1992	37,542	43,889
1993	38,180	44,635
1994	39,173	45,796
1995	40,779	47,674
1996	42,247	49,390
1997	43,007	50,279
1998	44,125	51,586
1999	45,140	52,772

Newly constructed or newly established facilities that are certified for medical assistance on or after May 1, 1990 will be allowed for capital asset investment per bed limit as follows:

	<u>Class B Residential</u>	<u>Class B Institutional</u>
1990	\$44,800	\$45,200
1991	45,696	46,104
1992	46,381	46,796
1993	47,169	47,592
1994	48,395	48,829
1995	50,379	50,831
1996	52,193	52,661
1997	53,132	53,609
1998	54,513	55,003
1999	55,767	56,268

(2) The limitations in subitem (1) shall be adjusted on January 1 each year by the percentage increase utilized by the Bureau of the Census composite fixed-weighted price index as published in the Survey of Current Business. Facilities entering the medical assistance program shall be subject to the limitation in effect at the time the facility entered the program.

(3) The depreciation on additions, replacements, or newly acquired depreciable equipment shall be allowed without regard to the limits in this item, if the acquisitions were required subsequent to the facility's certification in order to maintain compliance with the Life Safety Code, or with fire safety orders issued by an appropriate authority.

(4) After the facility's first three full reporting years and every three full reporting years thereafter, the facility's investment per bed limitation established according to subitems (1) to (3) shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous three full reporting years. For purposes of this subitem, a full reporting year must contain at least 12 months. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment in historical capital costs of capital assets shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

The investment per bed limit for Class B (Residential) and Class B (Institutional) must not be used in determining the three-year average percentage increase adjustment for facilities with Class A and Class B beds that were newly constructed or newly established before May 1, 1990.

(5) For purposes of this item, the facility's total historical capital cost of capital assets must not include the facility's allowable portion of capital assets of the central, affiliated, or corporate office whose costs are allocated to the facility's administrative cost category in accordance with Section 3.040, item D.

D. Gains and losses on the disposal of capital assets must be included in the computation of allowable costs. A gain on the sale or abandonment of a facility's capital assets must be offset against the property related cost category to the extent that the gain resulted from depreciation expense claimed for reimbursement. Gains or losses on trade-ins shall be reflected in the historical capital cost of the acquired capital asset. Claims for losses are limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

E. Except as provided in Section 9.070, facilities must fund depreciation according to subitems (1) to (9).

(1) The annual deposit to the funded depreciation account must be determined according to the following formula:

(allowable depreciation - required annual principal payment
on the capital debt) multiplied by (1 - the percentage of equity
determined in Section 9.050).

The required annual deposit to the funded depreciation account and any amount determined in Section 9.050, item F, which is not used to reduce capital debts or working capital loans must be deposited to the account no later than the end of the reporting year.

(2) Funded depreciation must be invested in liquid marketable investments such as savings or money market accounts, certificates of deposit, and United States Treasury bills.

(3) Funded depreciation and interest income earned on funded depreciation must be used for capital debt reduction or for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(4) An amount not to exceed 50 percent of the cumulative total amount of allowable depreciation required to be deposited in the funded depreciation account and the interest income earned on funded depreciation may be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility. If the amount in the funded depreciation account after a withdrawal is equal to or greater than the balance of capital debt remaining at the end of the prior reporting year, that excess amount may also be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(5) A separate funded depreciation account must be maintained for each facility.

(6) Income earned on funds withdrawn for purposes other than those allowed in subitem (3) or in excess of the percent allowed in subitem (4) must be offset against the facility's property related costs. These withdrawals must be assumed to be on a first in, first out basis.

(7) Providers who do not deposit the required amount of depreciation in the funded depreciation account by the end of the reporting year will have their allowable capital debt interest expense for the facility reduced. The reduction must be calculated by assuming that the portion of funded depreciation not deposited in the funded depreciation account during the reporting year was applied to reduce capital debts in accordance with Section 9.050, item C.

(8) Funds deposited to meet the required Depreciation Reserve of the Minnesota Housing Finance Agency fulfill the requirements of this item. Amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency or other similar accounts are not considered funded depreciation. Facilities financed by the Minnesota Housing Finance Agency must submit a copy of a statement breaking out the interest income according to the type of deposit.

(9) Separate interest-bearing funded depreciation accounts will be established in the state treasury for state-operated, community based programs. As payments are received, the portion of the payment rate representing allowable depreciation expense and the capital debt reduction allowance will be deposited in the state treasury and credited to the separate interest-bearing accounts as dedicated receipts with unused funds carried over to the next fiscal year. Funds within these accounts are appropriated to the Department for the purchase of replacement of capital assets or payment of capitalized repairs for each respective program.

Section 9.020 Limitations on interest rates. The Department shall limit interest rates according to items A to C.

A. Except as provided in item B, the effective interest rate of each allowable capital debt, including points, financing charges, and amortization of bond premiums or discounts, entered into after December 31, 1985, is limited to the lesser of subitems (1), (2), and (4) for all capital debt except motor vehicles. The limitations on motor vehicle capital debt is the lesser of subitems (1), (3), and (4). The limits are:

(1) the effective interest rate on the capital debt;

(2) a rate 1.5 percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation as published in the *Wall Street Journal* and in effect on the first day of the month in which the capital debt is incurred;

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ATTACHMENT 4.19-D (ICF/MR)

Page 174

(3) a rate three percentage points above the prime rate as published in the *Star Tribune* and in effect on the first day of the month in which the capital debt is incurred; or

(4) 16 percent.

B. Variable or adjustable interest rates for allowable capital debts are allowed subject to the limits in item A. For each allowable capital debt with a variable or adjustable interest rate, the effective interest rate must be computed by dividing the interest expense including points, financing charges, and amortization of bond premiums or discounts for the reporting year by the average allowable capital debt. The average allowable capital debt shall be computed as in Section 9.030, item G, subitem (4).

C. The effective interest rate for capital debts incurred before January 1, 1984, is allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest rate is not in excess of what the borrower would have had to pay in an arms-length transaction in the market in which the capital debt was incurred. For rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is subject to the limit in item A, subitem (4), unless the refinancing of the capital debt is prohibited by the original terms of the agreement with the lender.

Section 9.030 Allowable interest expense. Allowable capital debt interest expense shall be determined in accordance with items A to J.

A. Except as in Section 9.010, item E, subitem (7), interest income earned on the required funded depreciation shall not be deducted from capital debt interest expense and working capital interest expense. Interest income earned on amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency or other similar accounts and which is available during the reporting year to the provider or provider group shall be deducted from capital debt interest expense. Any other interest income shall not be deducted from capital debt interest expense. Except for interest income earned on the required funded depreciation, interest income available during the reporting year to the provider or provider group shall be deducted from the working capital interest expense.

B. All interest expense for capital debts entered into prior to January 1, 1984, shall be allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest expense is not in excess of what the borrower would have had to pay in an arms-length transaction, except that for rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984 is allowed subject to Section 9.020, item A, subitem (4).

C. A facility which has a restricted fund must use its restricted funds to purchase or replace capital assets to the extent of the cost of those capital assets before it borrows funds for the purchase or replacement of those capital assets. For purposes of this section, a restricted fund is a fund whose use is restricted by the donor, the nonprofit facility's board, or any other nonrelated organization, to the purchase or replacement of capital assets.

D. Construction period interest expense must be capitalized as a part of the cost of the physical plant. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients, except that the period of construction cannot extend beyond the date on which the project is complete. A project is complete when a certificate of occupancy is issued or, if a certificate of occupancy is not required, when the project is available for use.

E. Interest expense for capital debts entered into after December 31, 1983, shall be allowed for the portion of the capital debt which together with all other outstanding capital debts does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations in item H and Section 9.010, item C.

F. Interest expense for capital debts on capital assets acquired, leased, constructed, or established after December 31, 1983, shall be allowable only for the portion of the capital debt which does not exceed 80 percent of the historical capital cost of the capital asset including points, financing charges, and bond premiums or discounts subject to the limitations in item H and Section 9.010, item C.

(1) A newly constructed or newly established facility's interest expense limitation as provided in this item, on capital debt for capital assets acquired during the interim or settle-up period, will be increased by 2.5 percentage points for each full .25 percentage points that the facility's interest rate on its mortgage is below the maximum interest rate as established in Section 9.020, item A, subitem (2). For all following rate periods, the interest expense limitation on capital debt in item will apply to the facility's capital assets acquired, leased, or constructed after the interim or settle-up period. If a newly constructed or newly established facility is acquired by the state, the limitations of this item will not apply.

(2) A newly constructed or newly established ICF/MR that is developed and financed during the period beginning October 1, 1996 and ending June 30, 1997 must not be subject to the equity requirements in Section 9.050 or this item, provided that the provider's interest rate does not exceed the interest rate available through state agency tax exempt financing.

G. Changes in interest expense, except increases in interest expense due to refinancing of existing capital debts, or changes in ownership, shall be allowed in the calculation of the total payment rate for the rate year following the reporting year in which the cost was incurred. Changes in interest expense due to refinancing of existing capital debts, changes in ownership, or reorganization of provider entities, shall be subject to subitems (1) to (4).

(1) Increases in interest expense due to changes in ownership, reorganization of provider entity, or the refinancing of a capital debt, except for refinancing of a capital debt allowed under subitems (2) to (4), are not allowable costs.

(2) Increases in interest expense due to refinancing of a construction capital debt for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital debt which does not exceed the limitation in item F. The interest rate on the refinanced construction capital debt shall be limited under Section 9.020.

(3) Increases in interest expense which result from refinancing of a capital debt with a balloon payment shall be allowed according to clauses (a) to (c).

(a) The interest rate on the refinanced debt shall be limited under Section 9.020, item A.

(b) The refinanced capital debt shall not exceed the balloon payment, except to the extent of refinancing costs such as points, origination fees, or title search.

(c) The term of the refinanced capital debt shall not exceed the term of the original debt computed as though the balloon payment did not exist. If the term of the original debt does not extend beyond the date of the final balloon payment, the term of refinanced capital debt shall not exceed 30 years including the term of the original capital debt.

(4) Increases in interest expense for a variable or adjustable rate capital debt are allowable if the effective interest rate does not exceed the limits in Section 9.020, item A, subitem (4). For each variable or adjustable rate capital debt, the effective interest rate shall be computed by dividing the interest expense including points, finance charges, and amortization of bond premiums and discounts, for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital debt shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital debt which has zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.